



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2018-0030]

RIN 0750-AJ88

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Riding Gang Member Requirements" (DFARS Case 2018-D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the agency that conducts the background check procedures that are required for contractors who perform work on U.S.-flag vessels under DoD contracts for ocean transportation services.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to modify the clause at DFARS 252.247-7027, Riding Gang Member Requirements. This DFARS clause is included in solicitations and contracts for the acquisition of commercial items, which are for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under 46 U.S.C., chapter 121.

DFARS clause, 252.247-7027, Riding Gang Member Requirements, ensures that riding gang members are qualified to serve on board the vessel and that both riding gang members and DoD-exempted individuals onboard will not pose a security risk based on criminal or other records. Paragraph (c)(2)(i)(B) of the clause requires the contractor to immediately remove any exempted individual from the vessel that is deemed unsuitable by Military Sealift Command (MSC) Force Protection. This requirement imposes duties on MSC that exceed the scope of their personnel screening agreement. MSC has authorization to screen persons who have access to MSC chartered vessels, but they do not screen persons who have access to non-MSC chartered or contracted vessels. This paragraph is modified to state that the Government agency conducting the background check is the authority responsible for deeming the individual unsuitable, not MSC.

The modification of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On

February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247-7027 and determined that the clause text needed to be modified.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses. The rule only revises DFARS clause 252.247-7027, Riding Gang Member Requirements, to state that the Government agency conducting the background check is the authority responsible for deeming the individual unsuitable, in lieu of the Military Sealift Command force protection personnel. This clause is already prescribed

for use in commercial item acquisitions, and for use below the SAT.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule simply updates the name of a Government agency to reflect current Government procedures.

IV. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not an Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because the rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.247-7027 [Amended]

2. Amend section 252.247-7027 by—

- a. Removing the clause date “(OCT 2011)” and adding “(MAY 2018)” in its place; and
- b. In paragraph (c)(2)(i)(B), removing “Military Sealift Command Force Protection personnel” and adding “the Government agency conducting the background checks” in its place.

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